

UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO  
District Judge S. Kato Crews

Civil Action No. 1:22-cv-02943-SKC-CYC

PARKER EGBERT,

Plaintiff,

v.

ROBERT GRISWOLD,  
UNITED STATES OLYMPIC & PARALYMPIC COMMITTEE, and  
DOES 1 THROUGH 50, inclusive, whose true names are unknown,

Defendants.

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**ORDER**

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In his First Amended Complaint, Plaintiff asserts this Court has diversity subject matter jurisdiction under 28 U.S.C. § 1332. Dkt. 58, ¶41. However, in the related case, *HDI Global Specialty SE v. United States Olympic & Paralympic Committee, et al.*, No. 1:24-cv-01745-SKC-MDB (D. Colo.), Defendant United States Olympic & Paralympic Committee (USOPC) argued the Court lacks subject matter jurisdiction because USOPC is a federally chartered corporation. *HDI Global*, Dkt. 59, pp.6-7. The Court agreed and dismissed that case. *Id.* at Dkt. 86.

After dismissing the *HDI Global* case, this Court was put on notice of the effect that USOPC's status as a federally chartered corporation has on the Court's jurisdiction. Accordingly, this Court issued an Order to Show Cause (OSC) ordering the parties to explain why the present case should not be dismissed for lack of subject

matter jurisdiction. Dkt. 256, p.2. Each party filed a response, and the Court held a hearing on October 31, 2025. *See* Dkt. 259 (Griswold Response); Dkt. 260 (USOPC Response);<sup>1</sup> Dkt. 261 (Egbert Response).

Plaintiff Egbert stated in his Response that “this Court lacks diversity subject matter jurisdiction over Plaintiff’s claims,” in complete contradiction to the allegations in the First Amended Complaint, which were predicated on diversity jurisdiction. Dkt. 261, p.7. Instead, Egbert pivoted and argued that the Court had federal question jurisdiction and/or supplemental jurisdiction. *Id.*

USOPC also pivoted. It argued that (1) there is federal question jurisdiction, (2) the Court should not interpret 36 U.S.C. § 220505(b)(9) in a manner that leads to absurd results, and (3) the Court should “defer ruling on subject matter jurisdiction

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<sup>1</sup> To date, USOPC *still* has not itself raised or argued the Court lacks subject matter jurisdiction in this case. The issue arose here because the Court raised it, not USOPC. The Court cannot fathom how a federally chartered corporation in two separate cases before the same judge, can take completely inconsistent and contradictory positions about the Court’s subject matter jurisdiction over that party. USOPC’s reflex should be to file a motion to dismiss when it is originally sued in federal court given the plain language of 36 U.S.C. § 220505(b)(9). Instead, the parties have litigated this case for three years, wasting considerable judicial time and resources, as well as their own. To be sure, all counsel, including counsel for USOPC, agreed at the hearing that without a finding of federal question jurisdiction, there is no subject matter jurisdiction in this case. The Court informed counsel for USOPC at the hearing that it considers the conduct sanctionable. But the Court has determined that USPOC and its counsel have avoided sanctions by the skin of their teeth.

as between Plaintiff and USOPC until after the case against Griswold concludes.”<sup>2</sup>

Dkt. 260, p.4-11.

Defendant Griswold took “no position” as to whether diversity jurisdiction exists and did not argue that federal question jurisdiction exists. Dkt. 259, ¶3. Instead, Griswold argued that the Court should exercise its authority under Federal Rule of Civil Procedure 21 to cure the jurisdictional defect by dismissing the nondiverse party, USOPC, and continue the lawsuit against Griswold. *Id.* at ¶¶3-7.

First, the Court finds, consistent with its decision in *HDI Global*, that there is no diversity jurisdiction. Second, the Court finds there is no federal question jurisdiction because this case does not involve a substantial question of federal law. Third, there is no supplemental jurisdiction because the Court does not have original jurisdiction over any of the claims brought by Plaintiff. The Court is also not persuaded by the parties’ implication that the Court could retain the case given the length of time it has been pending and the potential harm that dismissal would cause them. Subject matter jurisdiction is not waivable. *Becker v. Ute Indian Tribe of the Uintah & Ouray Rsrv.*, 770 F.3d 944, 947 (10th Cir. 2014). This is black letter law.

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<sup>2</sup> Specifically, USOPC argues that “the parties will be significantly prejudiced by having to restart in state court.” Dkt. 260, p.11. But as the parties should know, “[a] court lacking jurisdiction cannot render judgment but must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking. *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974) (citing *Bradbury v. Dennis*, 310 F.2d 73, 74 (10th Cir. 1962)). USOPC’s argument to the contrary is without merit and the Court will not address it further.

And the Court has no choice but to dismiss a case in which subject matter jurisdiction does not exist. Lastly, the Court will not exercise its discretion under Rule 21 to dismiss only USOPC. The case will be dismissed in its entirety.<sup>3</sup> The Court's reasoning is explained in detail below.

## I. LEGAL PRINCIPLES

### A. Subject Matter Jurisdiction

Federal courts, as courts of limited jurisdiction, must have a statutory basis for their jurisdiction. *See Morris v. City of Hobart*, 39 F.3d 1105, 1111 (10th Cir. 1994) (citing *Castaneda v. INS*, 23 F.3d 1576, 1580 (10th Cir. 1994)). The determination of a court's subject matter jurisdiction is a question of law. *Madsen v. United States ex rel. U.S. Army, Corps of Eng'rs*, 841 F.2d 1011, 1012 (10th Cir. 1987). "A court lacking jurisdiction cannot render judgment but must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking. *Basso*, 495 F.2d at 909 (citing *Bradbury*, 310 F.2d at 74). "The burden of establishing subject-matter jurisdiction is on the party asserting jurisdiction." *Montoya v. Chao*, 296 F.3d 952,

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<sup>3</sup> In addition, there are currently seven motions pending before the Court. The Court denies all seven as moot based on the Court's lack of subject matter jurisdiction. The motions include: (1) USOPC's Motion to Exclude the Expert Opinions of Brenda A. DeMattio (Dkt. 208); (2) USOPC's Motion to Exclude/Limit the Testimony of Plaintiff's Non-Retained Expert Witnesses (Dkt. 209); (3) Griswold's Motion to Exclude Certain Opinions of Dr. Helena Huckabee (Dkt. 210); (4) Egbert's Motion to Exclude the Testimony of Dr. Helena Huckabe (Dkt. 212); (5) Egbert's Motion to Exclude the Testimony of Dr. Jennifer L. Johnson (Dkt. 215); (6) Egbert's Motion to Exclude the Testimony of Dulce Sols (Dkt. 218); and (7) USOPC's Motion for Partial Summary Judgment (Dkt. 250).

955 (10th Cir. 2002) (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)).

**B. Rule 21**

Under Rule 21, “the court may at any time, on just terms, add or drop a party” to cure a jurisdictional defect if the party is dispensable. Fed. R. Civ. P. 21; *Ravenswood Inc. Co., L.P. v. Avalon Corr. Servs.*, 651 F.3d 1219, 1223 (10th Cir. 2011). To determine whether a party is dispensable, courts look to Rule 19. *See* Fed. R. Civ. P. 19; *Ravenswood*, 651 F.3d at 1223. The factors to consider under Rule 19 include “(1) the extent to which a judgment rendered in the person’s absence might prejudice that person or the existing parties;” “(2) the extent to which any prejudice could be lessened or avoided;” “(3) whether a judgment rendered in the person’s absence would be adequate;” and “(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.” Fed. R. Civ. P. 19(b). Courts in this district have also considered other factors, such as the identity of the parties, the posture of the case, efficiency concerns, and the culpability of the parties. *See PayoutOne, LLC v. Coral Mortg. Bankers*, No. 08-cv-01617-PAB-MJW, 2009 WL 3526578, at \*3 (D. Colo. Oct. 22, 2009); *MPVF Lexington Partners, LLC v. W/P/V/C, LLC*, No. 15-cv-0467-WJM-KMT, 2016 WL 8234667, at \*3 (D. Colo. Sept. 13, 2016).<sup>4</sup>

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<sup>4</sup> Another court in the District of Colorado considered the following factors: (1) whether the claims arise out of the same transaction or occurrence, (2) whether the claims present some common question of law or fact, (3) whether settlement of the claims or judicial economy would be facilitated by severance, (4) whether prejudice would be avoided if severance were granted, and (5) whether different witnesses and

The Tenth Circuit has made clear that the decision to dismiss a party under Rule 21 is a matter left to the court’s discretion, with the caveat that the Court cannot dismiss an indispensable party. *Lenon v. St. Paul Mercury Ins. Co.*, 136 F.3d 1365, 1371 (10th Cir. 1998); *Woods v. Ross Dress for Less, Inc.*, 833 Fed. App’x 754, 761 (10th Cir. 2021). “Ultimately, a Rule 19(b) analysis is governed by ‘pragmatic considerations’ not ‘categorical rules’ and based on factors ‘varying with the different cases, some such factors being substantive, some procedural, some compelling by themselves, and some subject to balancing against opposing interests.’” *Arnswald v. Kay Cnty. Okla. Hosp. Co., L.L.C.*, No. CIV-20-598-SLP, 2021 WL 2481680, at \*6 (W.D. Okla. June 17, 2021) (quoting *Lenon*, 136 F.3d at 1372).

## II. BACKGROUND

The parties are well-familiar with the events leading to the filing of this lawsuit. Thus, the Court refrains from reciting any of the underlying factual allegations outside of those which are important to determining whether this Court has subject matter jurisdiction. Concerning diversity subject matter jurisdiction, the only material fact is that USOPC is a federally chartered corporation under 36 U.S.C. § 220502(a).<sup>5</sup>

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documentary proof are required for the separate claims. *Saad v. Preferred Contractors Ins. Co., RRG*, No. 18-cv-00776-REB-NRN, 2019 WL 13202164, at \*3 (D. Colo. Mar. 29, 2019).

<sup>5</sup> When used in the Ted Stevens Olympic and Amateur Sports Act (ASA), “corporation” refers to USOPC. *See* 36 U.S.C. § 220501(b)(7).

With respect to federal question jurisdiction, it should first be noted that the Amended Complaint only asserts causes of action under state law against both Griswold and USOPC. *See generally* Dkt. 58. The Amended Complaint discusses two federal statutes, the Ted Stevens Olympic and Amateur Sports Act (ASA), and the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017 (Safe Sport Act). *Id.* at ¶¶68-72. But Egbert mentions these statutes as a potential source of duties, among other sources, with respect to his state law negligence claims brought against USOPC. The alleged duties the Court earlier identified, as raised by Egbert in his complaint, included:

- a duty to protect athletes from abuse, including sexual abuse (*Id.* at ¶¶23, 72, 120);
- a duty to supervise and protect its athletes (*Id.* at ¶¶36, 74, 76, 121);
- by “operating the programs and facilities at [the Training Center], where athletes live and train, and organizing the athletes’ competition in Olympic events, USOPC undertook a duty to supervise and protect those athletes” (*Id.* at ¶36);
- a heightened duty with respect to athletes with known disabilities who are foreseeably more vulnerable to abuse (*Id.* at ¶¶36, 75, 143);
- a duty to protect Plaintiff from physical, verbal, and sexual abuse (*Id.* at ¶¶140, 170);
- a duty under the ASA “to promote a safe environment in sports that is free from abuse, including emotional, physical, and sexual abuse, of any amateur athlete” (*Id.* at ¶141);

- a duty arising from a special relationship between Defendant and Plaintiff (*Id.* at ¶145);
- a duty to “adequately supervise Plaintiff, such that Plaintiff would not be subjected to [abuse]” (*Id.* at ¶¶153, 165);
- a duty to properly train its officers, directors, employees, agents, etc., to adequately supervise Plaintiff and a duty not to retain these individuals who are capable of perpetuating or allowing abuse (*Id.* at ¶¶156, 165);
- a duty to supervise Griswold (*Id.* at ¶162); and
- a duty to warn Plaintiff or his parents of the danger Griswold posed (*Id.* at ¶174).

The Court previously had a chance to consider these duties when USOPC filed a Motion to Dismiss the negligence claims against it on the theory that the claims were barred by the Colorado Premises Liability Act (CPLA). Dkt. 66, pp.6-8. In the Order, this Court found that if Egbert alleged a duty separate from the duties owed by a landowner to its entrants under the CPLA, then he could bring both his CPLA claim and his negligence claims. Dkt. 153, pp.7-8. Importantly, this Court identified “a duty to act to protect Plaintiff arising out of a special relationship between Defendant and Plaintiff” to be a plausible separate duty. *Id.* at p.10. To determine whether a duty based on a special relationship existed, this Court turned to state law factors. *Id.* As evidence that a special relationship existed, the Court considered the express codified purpose of USOPC under the ASA. *Id.* at p.11. In making this determination, the Court noted that Plaintiff cited the ASA and Safe Sport Act “in

his effort to argue some statutory duty supporting his negligence claims.” *Id.* at p.11 n.6.

### III. ANALYSIS

#### A. Does the Court have diversity jurisdiction?

Egbert asserts in his Amended Complaint that the Court has diversity jurisdiction under 28 U.S.C. § 1332. Dkt. 58, ¶41. The Defendants, even USOPC, have agreed there was diversity jurisdiction throughout the three-year life of this case. But, in relevant part, § 1332(a)(1) provides, “[t]he district courts shall have original jurisdiction of all civil actions . . . between . . . citizens of different States[.]”<sup>6</sup> 28 U.S.C. § 1332.

USOPC is not a state chartered corporation; rather, it is federally chartered by the ASA. 36 U.S.C. §§ 220501(a), 220502(a). Among its general corporate powers granted by Congress is the power to:

[S]ue and be sued, except that any civil action brought in a State court against the corporation and solely relating to the corporation’s responsibilities under this chapter shall be removed, at the request of the corporation, to the district court of the United States in the district in which the action was brought, and such district court shall have original jurisdiction over the action without regard to the amount in controversy or citizenship of the parties involved, and except that

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<sup>6</sup> Section 1332 also provides for diversity jurisdiction in civil actions between “citizens of a State and citizens or subjects of a foreign state . . .,” “citizens of different States and in which citizens or subjects of a foreign state are additional parties,” and “a foreign state . . . as plaintiff and citizens of a State or of different States.” 28 U.S.C. § 1332(a)(2)-(4). None of these apply to the present action.

neither this paragraph nor any other provision of this chapter shall create a private right of action under this chapter.

*Id.* at § 220505(b)(9).

The Supreme Court has held that federally chartered corporations are not citizens of any state unless Congress expressly provided for such citizenship. *Wachovia Bank v. Schmidt*, 546 U.S. 303, 306 (2006); *Bankers Tr. Co. v. Tex. & Pac. Ry. Co.*, 241 U.S. 295, 309-10 (1916). And to properly invoke diversity jurisdiction, all parties must have a state or foreign citizenship. *Navy Fed. Credit Union v. LTD Fin. Servs., LP*, 972 F.3d 344, 353 (4th Cir. 2020). “[S]tateless individuals (or corporations) may destroy diversity jurisdiction.” *Id.* (citing *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 829 (1989)).

While this Court was unable to find controlling authority on whether the USOPC has state citizenship for purposes of § 1332, the Court finds persuasive those courts that have found it does not. *See, e.g., Phila. Indem. Ins. Co. v. U.S. Olympic Comm.*, No. 19-cv-01231-CMA-KMT, 2020 WL 4783516, at \*6 (D. Colo. Aug. 18, 2020). For example, the court in *Philadelphia Indemnity* meticulously analyzed whether the United States Olympic Committee, which is identical to USOPC under 36 U.S.C. § 220502(c), possesses state citizenship such that a plaintiff can assert diversity jurisdiction. *Id.* at \*2. It answered in the negative, finding that “USOC is not a citizen of Colorado for the purposes of diversity jurisdiction. The Court does not have diversity jurisdiction over USOC through 28 U.S.C. § 1332(c) or the ASA.” *Id.* at \*6. Relying on *Bankers Trust, supra*, the court found that USOC has no state

citizenship for purposes of § 1332, only national citizenship. *Id.* at \*\*3-4. It further found “there is no evidence that Congress ever considered the applicability of the 1958 amendment [to § 1332 regarding the citizenship of corporations] to federal corporations.” *Id.* at \*3 n.3 (quoting *Burton v. U.S. Olympic Comm.*, 574 F. Supp. 517, 519 (C.D. Cal. 1983)).

These conclusions are echoed by other courts in this district when a federally chartered corporation is a party. *See Fed. Nat’l Mortg. Ass’n v. Amerson*, No. 19-cv-02361-PAB, 2019 WL 4410009, at \*2 (D. Colo. Sept. 16, 2019) (“In a suit where one of the [parties] has only national citizenship but no state citizenship, diversity is impossible because the suit is not between citizens of different states.”); *Multibank 2009-1 RES-ADC Venture, LLC v. CRM Ventures, LLC*, No. 10-cv-02001-PAB-CBS, 2010 WL 3632359, at \*2 (D. Colo. Sept. 10, 2010) (“Federal courts do not have diversity jurisdiction over federally-chartered corporations such as the FDIC because such corporations have no state citizenship.” (citations omitted)).

The plain language of the ASA does not expressly confer state citizenship on USOPC. *See* 36 U.S.C. § 220505(b)(9). While silent about state citizenship, it instead provides that USOPC, in its discretion, may remove a state court case “solely relating to the corporation’s responsibilities” under the ASA to federal court without considering either the citizenship of the parties or the amount in controversy. *Id.* Had Congress intended state citizenship for USOPC, it needed to have said so in the ASA. *Phila. Indem.*, 2020 WL 4783516, at \*4 (citing *Midlantic Nat’l Bank v. New Jersey*

*Dep't of Env't Prot.*, 474 U.S. 494, 501 (1986)) (“Given that the ASA was enacted post-*Bankers Trust* and the cases that followed, the Court assumes that Congress was aware of *Bankers Trust* and that, to deviate from the rule that federally chartered corporations do not have state citizenship, it would need to specify intent.”).

Similarly, “[s]ome courts have recognized an exception to the general rule that a federally chartered corporation has no state citizenship where the corporation is ‘localized’ in a certain state.” *Id.* at \*5. But neither the Supreme Court nor the Tenth Circuit have adopted the localization exception. *Id.* Applying the exception here “would be contrary to the well-established rule that ‘statutes conferring jurisdiction upon the federal courts . . . are to be narrowly construed in light of [federal courts’] constitutional role as limited tribunals.”<sup>7</sup> *Id.* (quoting *Pritchett v. Office Depot, Inc.*, 420 F.3d 1090, 1094-95 (10th Cir. 2005)).

USOPC nonetheless argues that this interpretation of 36 U.S.C. § 220505(b)(9) leads to absurd results that Congress could not have intended. Dkt. 260, pp.9-11. The Court is not persuaded.

The “absurdity doctrine” is an exception to the plain meaning rule of statutory construction. *Resol. Tr. Corp. v. Westgate Partners, Ltd.*, 937 F.2d 526, 529 (10th Cir. 1991). According to this doctrine, “interpretations of a statute which would produce

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<sup>7</sup> Even if the Court were to apply the localization exception, it is likely the outcome would be the same because USOPC “has a national purpose and its operations are national in scope.” *Phila. Indem.*, 2020 WL 4783516, at \*5.

absurd results are to be avoided if alternative interpretations consistent with legislative purposes are available.” *In re McGough*, 737 F.3d 1268, 1276 (10th Cir. 2013) (quoting *Griffin v. Oceanic Contractors*, 458 U.S. 564, 575 (1982)). However, the exception should only be used “to carry out Congress’ intent—not to override it,” and “so long as Congress remains faithful to the Constitution, it is free to enact any number of foolish statutes.” *Resol. Tr. Corp.*, 937 F.2d at 529. There is a presumption that Congress meant what it said, especially when “the words are clear and not ambiguous when given their ordinary meaning.” *In re McGough*, 737 F.3d at 1276.

The words chosen by Congress are a restraint upon the courts, and if we are not tethered by them in all but the most compelling of cases, then there is left no restraint . . . to corral the power of the courts from substituting their judgment of proper public policy for that of the legislature’s.

*Id.* (quoting *Resol. Tr. Corp.*, 937 F.2d at 531).

USOPC “begs a broader view of its ability to sue and be sued in federal court, beyond the confines of § 220505(b)(9).” Dkt. 260, p.10. But it’s clear from the standard articulated above that this is not the Court’s role. The plain language of the statute is clear: “Congress granted USO[P]C the right to remove a given lawsuit against it to federal court; however, it did not specifically provide state citizenship to USO[P]C or specifically provide for diversity jurisdiction over USO[P]C in federal courts”. *Phila. Indem.*, 2020 WL 4783516, at \*4; 36 U.S.C. § 220505(b)(9). As the Court said in *Philadelphia Indemnity*, if Congress intended state citizenship for USOPC, it needed

to have said so in the ASA. *Phila. Indem.*, 2020 WL 4783516, at \*4 (citing *Midlantic Nat'l Bank*, 474 U.S. at 501).

If Congress wanted to confer original jurisdiction over all actions involving USOPC, it could have. If USOPC is unhappy with the plain meaning of the statute, it can lobby Congress for change. See *In re MCGough*, 737 F.3d at 1276. Accordingly, the Court does not believe this statute creates a result so absurd that it could not have been what Congress intended when considering the plain meaning of § 220505(b)(9).

The Court finds that USOPC has no state citizenship, only national citizenship. Consequently, the Court has no diversity subject matter jurisdiction over this case. The Court next addresses whether it has federal question jurisdiction.

**B. Does the court have federal question jurisdiction?**

Federal courts have original jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. A case “arises under” federal law when “a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” *Gilmore v. Weatherford*, 694 F.3d 1160, 1170 (10th Cir. 2012) (quoting *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 690 (2006)). USOPC and Egbert urge this Court to find that it has federal question jurisdiction under the “substantial question” prong. Dkt. 260, p.4; Dkt. 261, p.7.

The substantial question prong is “exceedingly narrow” and is reserved for only a special and small category of cases. *Gilmore*, 694 F.3d at 1171 (citing *Empire*, 547 U.S. at 699); *see also Royal Cain U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 26 (2025) (“On *rare occasions*, the grant also covers a suit concerning state-law claims alone, because one or more of them ‘necessarily raises’ a ‘substantial’ and ‘*actually disputed*’ federal question.”) (emphasis added). To invoke a substantial question, a plaintiff must show that a federal issue is “(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.” *Becker*, 770 F.3d at 947 (quoting *Gunn v. Minton*, 568 U.S. 251, 258 (2013)). Substantial question jurisdiction, however, does not “disturb the long-settled understanding that the mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction.” *Id.* (quoting *Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 813 (1986)).

Two Supreme Court cases help develop the instances in which a substantial question is involved and instances in which one is not. In *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, the plaintiff brought a quiet title action in state court alleging that defendant’s record title was invalid because the IRS failed to notify him in the manner required by federal law. 545 U.S. 308, 310-11. Defendant removed the case because “the claim of title depended on the interpretation of the notice statute in the federal tax law.” *Id.* at 311. The Court held there was federal question jurisdiction because “[w]hether Grable was given notice

within the meaning of the federal statute is thus an essential element of its quiet title claim, and the meaning of the federal statute is actually in dispute; it appears to be the only legal or factual issue contested in the case,” and “because it will be the rare state title case that raises a contested matter of federal law, federal jurisdiction to resolve the genuine disagreement over federal tax title provisions will portend only a microscopic effect on the federal-state division of labor.” *Id.* at 315. In determining that federal question jurisdiction existed, the Court upheld the continuing vitality of its holding in *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804 (1986), discussed below. *Id.* at 319.

In *Merrell Dow Pharms. Inc.*, a plaintiff alleged that a drug was misbranded in violation of the Federal Food, Drug, and Cosmetic Act (FDCA) which created a rebuttable presumption of negligence under state law. 478 U.S. at 805-06. The parties agreed that there was no private right of action under the FDCA. *Id.* at 810. The Court held that “a complaint alleging a violation of a federal statute as an element of a state cause of action, when Congress has determined that there should be no private, federal cause of action for the violation, does not state a claim ‘arising under the Constitution, laws, or treaties of the United States.’” *Id.* at 817 (quoting 28 U.S.C. § 1331). It should be noted, however, that this factor is relevant to, but not dispositive of “the sensitive judgments about congressional intent that § 1331 requires.” *Grable*, 545 U.S. at 318.

The Court holds that this case is more akin to *Merrell Dow Pharms Inc.* and thus no federal question jurisdiction exists. Specifically, the federal issue is not substantial and would disrupt the federal-state balance approved by Congress. *Becker*, 770 F.3d at 947.

First, Plaintiff's Amended Complaint alleges only state law causes of action. *See generally* Dkt. 58. And while the Amended Complaint does discuss the ASA, Plaintiff merely alleges that the ASA creates a legal duty under his state law negligence claims. *Id.* at ¶¶141, 154, 177 (“For example, under the Amateur Sports Act, Defendant USOPC maintains a legal duty . . .”). The same can be said for his allegations concerning the Safe Sport Act. *Id.* at ¶¶142, 155, 178 (“Moreover, under the Safe Sport Act, Defendant USOPC maintains a legal duty to protect athletes from abuse.”).

Further, while Plaintiff alleges ASA and the Safe Sport Act create a duty under state law, he has also alleged numerous and varied duties outside of these statutes as relevant to the negligence claims, as discussed above. *See supra* pp.6-7. USOPC also confirmed in its Response to the OSC that “Plaintiff alleged various sources of potential duty to support his negligence claims.” Dkt. 260, p.7. The inclusion of numerous duties outside of the alleged duties enumerated under the ASA and Safe Sport Act is evidence that the federal question is not substantial. *See XL Specialty Co. v. Vill. of Schaumburg*, No. 06 C 2299, 2006 WL 2054386, at \*3 (N.D. Ill. July 20, 2006) (“The inclusion of the FAA Advisory Circular as *one of several alleged duties*

that Schaumburg breached is an insufficiently substantial federal question and does not confer federal question jurisdiction.”) (emphasis added).

In addition, the ASA does not create a private right of action. In fact, Congress explicitly stated that there is no private right of action. *See* 36 U.S.C. § 220505(b)(9) (“[N]either this paragraph nor any other provision of this chapter shall create a private right of action under this chapter.”); *see also* *Martinez v. U.S. Olympic Comm.*, 802 F.2d 1275, 1281 (10th Cir. 1986) (holding no private right of action under the statute). Courts in this jurisdiction and others have followed the Supreme Court’s guidance in *Merrell Dow Pharms. Inc.* and held that there was no substantial question in circumstances like the one here when a statute provides no private cause of action. *See* *MMXII, Inc. v. QFA Royalties LLC*, No. 13-cv-00253-MSK, 2013 WL 599557, at \*3 (D. Colo. Feb. 15, 2013) (“The Plaintiffs allege that the Defendants violated various sections of the criminal code, none of which confer a private right of action. Instead, the violations of federal law are simply applied as an element of the state-law claims.”); *see also* *Sung v. Wasserstein*, No. 05 Civ. 7138(VM), 2006 WL 435449, at \*4 (S.D.N.Y. Feb. 21, 2006) (“[W]hen Congress has provided no private right of action under a federal statute, the borrowing of that federal law as a standard of conduct in a state created action is not sufficiently substantial to confer federal question jurisdiction.”)

And while the Safe Sport Act does provide for a private right of action, the Court is not convinced this transforms the case into one that involves substantial

federal questions. *See* Safe Sport Act of 2017, Pub. Law No. 115-126 § 102(a) (providing for a private of action). Plaintiff did not bring a cause of action under the Safe Sport Act; instead, he merely alleges (as one of several alleged duties) that the Safe Sport Act imposes a duty upon USOPC as one element of his negligence claims. *See* Dkt. 58, ¶¶142, 155, 178. This is not enough to create a substantial question. *See Mulholland v. Subaru of Am., Inc.*, 620 F. Supp.2d 1261, 1266 (D. Colo. 2009) (“[T]he determinations of the alleged violations of the FMVSA are but one element in plaintiffs’ causes of action under Colorado products liability law, which is insufficient to confer federal question jurisdiction, even assuming that the federal question is likely dispositive.”); *see also Becker*, 770 F.3d at 947 (“[T]he mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction.”); *XL Specialty Co.*, 2006 WL 2054386, at \*3 (“[T]hat XL Specialty imports a federal standard of negligence as an element to its state tort recovery is insufficient to create a substantial issue of federal law.”).

If this were not enough to explain there is no substantial question of federal law here, this Court’s ruling on the earlier Motion to Dismiss further shows how insubstantial the federal law issues are. Dkt. 153. There, in determining whether a duty existed, this Court analyzed state law factors and merely used the ASA as one piece of evidence that a special relationship existed between Egbert and USPOC, not an independent duty under the statute. *Id.* at p.11. This can in no way be construed as a substantial question of federal law. And even assuming it could, the Court has

already resolved those issues with its earlier ruling and findings on the Motion to Dismiss. *Id.*

The Court also believes that permitting this action to proceed in federal court would disrupt the federal-state balance approved by Congress. With respect to this element, USOPC focuses on the fact that “this case relates to USOPC’s responsibilities under the Act.” Dkt. 260, p.8. But the focus is actually on the traditionally and quintessentially state law negligence claims that Egbert brings against USOPC. With this focus, it is clear that permitting parties to bring negligence claims in federal court when a federal statute is merely used as a standard of care would open the floodgates to litigation in federal court of claims that should be in state court. *See Fuller v. BNSF Ry. Co.*, 472 F. Supp.2d 1088, 1095 (S.D. Ill. 2006) (“This state-law tort case in which a violation of a federal regulation is asserted merely as an element of a negligence claim is unmistakably of the kind that, absent federal subject matter jurisdiction in diversity, belongs in state court so as not to ‘materially affect, or threaten to affect, the normal currents of litigation.’”). For these reasons, the Court holds there is no federal question jurisdiction.

**C. Does the Court have supplemental jurisdiction?**

The Court quickly addresses Egbert’s argument that this Court can exercise supplemental jurisdiction over his claims against USOPC because diversity jurisdiction exists between Egbert and Griswold. Dkt. 261, p. 9-10. This is simply not how supplemental jurisdiction works. Supplemental jurisdiction exists “in any civil

action of which the district courts have original jurisdiction[.]” 28 U.S.C. § 1367 (emphasis added). Therefore, unless the Court has original jurisdiction first, it cannot exercise supplemental jurisdiction. *See Blagg v. Tech. Grp., Inc.*, 303 F. Supp.2d 1181, 1187-88 (D. Colo. 2004). The Court has carefully analyzed whether it has diversity or federal question jurisdiction and has determined it has neither. Thus, there is no original jurisdiction, and therefore, no supplemental jurisdiction to be had.

**D. Should the Court dismiss USOPC as a party?**

In Griswold’s Response, he states that “if the Court finds that diversity jurisdiction does not exist, Griswold respectfully suggests that this Court exercise its power to cure the deficiency by dismissing only the USOPC.” Dkt. 259, ¶3. Egbert previously opposed this suggestion when Griswold moved for a separate trial (Dkt. 158) and reiterated his opposition at the hearing on the OSC. Mostly for the reasons raised by Egbert in his opposition, the Court declines to exercise its discretion to dismiss USOPC as a party and continue the case as between Egbert and Griswold.

In conclusion, the Court has determined that it does not have subject matter jurisdiction to hear this case. In addition, the Court will not exercise its discretion and dismiss only USOPC. Accordingly, this case is dismissed in its entirety, without prejudice.<sup>8</sup>

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<sup>8</sup> Under Colo. Rev. Stat. § 13-80-111(1), if claims are properly commenced within the statute of limitations and involuntarily dismissed because of lack of jurisdiction, the plaintiff “may commence a new action upon the same cause of action within ninety days after termination of the original action or within the period otherwise allowed by this article, whichever is later.” *See also Artis v. D.C.*, 583 U.S. 71, 74-74 (2018)

\* \* \*

For the reasons shared above, the Court ORDERS:

The Show Cause Order (Dkt. 256) is made absolute;

this matter is DISMISSED WITHOUT PREJUDICE for lack of subject matter jurisdiction;

and all pending motions are denied as moot.

The Court FURTHER ORDERS the Clerk of Court to terminate this action.

DATED: November 5, 2025

BY THE COURT:



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S. Kato Crews  
United States District Judge

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(holding that 28 U.S.C. § 1367(d) tolls the statute of limitations for state law claims asserted under § 1367(a) during the pendency of the federal litigation in which such claims are brought and for thirty days following involuntary dismissal of those claims on jurisdictional grounds).